FILED
FEB 17 1972

71-926

IN THE

Supreme Court of the United States

1972 - October Term
No.

HERMAN A. STUHL, individually, in his own behalf, and in behalf of all tenants of DeLoy Executive Service, Inc., maintaining offices at 527 Madison Avenue, Borough of Manhattan, City, County and State of New York, similarly situated,

Petitioner,

-against-

527 MADISON AVENUE COMPANY, a limited partnership,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI to the Appellate Division of the New York Supreme Court

HENRY SCHNEIDER, ESQ.
Counsel for Respondent
51 West 51st Street
New York, New York 10019
(212) 581-9000

(2867)

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

INDEX

Opinion Below.....2

Jurisdiction.....2

Questions Presented.....2

Statement of Facts.....3

Argument.....6

CONCLUSION.....8

TABLE OF CASES

Fox Film Corp. v. Miller,
296 U.S. 207.....6

Murdock v. City of Memphis,
87 U.S. (20 Wall.) 590.....6

Stewart v. Long Island R.R. Co.,
102 N.Y. 601 7

214 W. 39 Street Corp. v. Miss
France Coats, Inc.,
214 App.Div. 597.....7

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

HERMAN A. STUHL, individually, in his own behalf, and in behalf of all tenants of DeLoy Executive Service, Inc,, maintaining offices at No. 527 Madison Avenue, Borough of Manhattan, City, County and State of New York, similarly situated,

Petitioner,

-v-

527 MADISON AVENUE COMPANY, a limited partnership,

Respondent.

RESPONDENT'S BRIEF
IN OPPOSITION TO A
PETITION FOR A WRIT OF CERTIORARI
to the Appellate Division of the
New York Supreme Court

OPINION BELOW

The opinion of the Appellate Division of the New York Supreme Court, First Judicial Department is reported at 36 A.D. 2d 502, 321 NYS 2d 811.

JURISDICTION

The order of the Appellate Division of the New York Supreme Court, First Judicial Department, entered on June 3, 1971, affirmed the judgment of the New York Supreme Court dismissing petitioner's complaint. Petitioner is incorrect in describing the order of the Appellate Division as a judgment. (Petition pp 22-26). On November 17, 1971, the New York Court of Appeals denied the petitioner's motion for leave to appeal to said Court. While the jurisdiction of this Court is invoked under 28 USCA 1257 (3), that jurisdiction fails, as the order appealed from is adequately supported by independent state grounds.

QUESTIONS PRESENTED

1. Whether the "Due Process" clause of the Fourteenth Amendment to the United States Constitution was violated, as claimed by petitioner, when his suit in the New York Supreme Court for a judgment declaring his rights to occupy real property was dismissed, without stating a disposition upon Federal constitutional grounds, upon several independent state grounds, namely (a) that the final judgments in the summary proceedings rendered

in the New York County Civil Court, wherein petitioner was a party, barred the action on the principle of res judicata (Petition p. 30) and (b) that petitioner, a month-to-month subtenant, had no standing to assert his landlord's rights (Ibid p. 30).

2. Whether the "Due Process" clause of the Fourteenth Amendment was violated, as claimed by petitioner, when the New York Supreme Court declared the rights between a landlord and tenant in Action No. 1 (See captions in Appellate Division opinion Petition at p. 14), without requiring petitioner, as subtenant, to be joined as a necessary party, and whether this issue is relevant and necessary to decide as the rights of petitioner, as subtenant or otherwise, were adjudicated in the summary proceedings in which petitioner was a party (Actions Nos. 2 and 3), so that the petioner's declaratory judgment action (Action No. 5), the subject of the within application) was resolved upon the non-constitutional grounds set forth in Question No. 1.

STATEMENT OF FACTS

The opinions of the Appellate Division (Petition p. 14) and Special Term (Ibid pp 27-30) disclose the basic facts. Negotiations were had in 1967 for a lease of the building to 527 Madison Avenue Company (527 Madison), a limited partnership. Among the tenants was DeLoy Executive Service, Inc. (DeLoy) which had a ten-year

lease on certain space. The lease was suspect on several grounds and 527 Madison refused to go through with the negotiations unless the owner made a new lease with DeLoy. DeLoy and the owner thereupon negotiated a second lease for three years at a higher rental and for some time paid the rent as reserved in the second lease. However, DeLoy made a claim for additional space pursuant to an option in the first lease and, in the events following the claim and its rejection, indicated an intention to assert the viability of the first lease.

Action No. 1 was thereupon started. It was an action for a declaratory judgment declaring that the second lease superseded the first and was the lease under which DeLoy was occupying the space. No answer or notice of appearance was put in by DeLoy or its president, who was also named as a party. Consequently, an inquest was held and judgment by default entered in 527 Madison's favor, decreeing that the new lease was the valid and existing lease between the parties. Upon the expiration of the second lease, summary proceedings were instituted in the Civil Court against DeLoy and others, including the petitioner herein (Stuhl). There were two proceedings, as DeLoy, in addition to the space demised in the second lease, was occupying other space pursuant to an assignment. These proceedings were designated by the Appellate Division as Actions 2 and 3. (Petition p. 19.)

DeLoy, the main tenant, thereupon instituted an action (Action No. 4) in the New York Supreme Court to rescind the second lease. Special Term summarily dismissed this action (Petition p. 29) on motion by 527 Madison, on the basis of its affirmative defense of res judicata, and the order was affirmed by the Appellate Division. No application is made in this Court by DeLoy, the main tenant.

The petitioner likewise instituted an action in the New York Supreme Court to declare that he had an interest in the said premises (Action No. 5), which action was also summarily dismissed on motion by 527 Madison. The opinion of Special Term indicates that the Court's decision was based not on federal constitutional grounds, but rather on the following state grounds: (a) the final judgment in the summary proceeding, in which petitioner was a party, directed petitioner's removal from said premises and adjudicated that he had no rights therein; and (b) the petitioner as subtenant had no standing to assert his landlord's rights (Petition p. 30). The Appellate Division's order dated June 3, 1971 (Petition pp 22-26) affirmed the judgment dismissing the complaint.

On November 17, 1971, the New York Court of Appeals denied petitioner's motion for leave to appeal from the judgment of the Appellate Division of the New York Supreme Court.

ARGUMENT

Adequate Independent State Grounds

It is an axiomatic rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, the Supreme Court lacks jurisdiction to review the judgment if the non-federal ground is independent of the federal ground and adequate to support the judgment (Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590, Fox Film Corp. v. Muller, 296 U.S. 207).

The petitioner (Stuhl) argues that Special Term denied him due process of law when it dismissed his declaratory judgment action. He bases his claim on the allegation that the Court's decision rested on the res judicata effect of the earlier declaratory judgment action instituted by Madison, to which Stuhl was not made a party. But an examination of the opinion of the Court at Special Term, which dismissed the petitioner's action (Action No. 5, the subject of the within application), discloses that the judgment below was based upon two non-constitutional grounds, as follows:

1. That the final judgments in the summary holdover proceedings (Actions Nos. 2 and 3) obtained by 527 Madison as landlord, ordering the eviction of the petitioner, a party thereto, were res judicata of the petitioner's action for a

declaratory judgment seeking to establish a lessee's interest in said premises. Not only is this proposition axiomatic throughout Anglo-American jurisdictions, but in any event the opinion of Special Term cites for such proposition authorities from the highest appellate court in New York State (Petition p. 30).

2. That the petitioner, as a month-to-month subtenant, had no standing to assert his landlord's rights. The opinion at Special Term stating the ground for lack of standing of the petitioner, is repeated herein for the convenience of this Court, as follows:

> "He has no standing to assert his landlord's rights especially where he is only a month-to-month tenant. No contractual liability arises between Stuhl a subtenant, and Madison, the paramount landlord, in connection with the October 1967 lease. There is no privity of contract between the subtenant Stuhl and Madison. (Stewart v. Long Island R.R. Co., 102 N.Y. 601), and a paramount landlord is not required to accept performance of the terms of the paramount lease by a subtenant, but can insist upon performance by the tenant with whom it is in privity (214 W. 39 Street Corp. v. Miss France Coats, Inc., 274 App.Div. 597). Hence, the subtenants are not necessary parties

to a declaratory judgment action upholding the validity of the October 1967 lease."

Accordingly, the order which is the subject of the petition herein was decided on non-constitutional grounds and thus raises no federal question. A fortiori, even if a federal question was raised, the petition does not establish the importance of this case to justify the granting of a writ of certiorari.

CONCLUSION

For the reasons above stated, respondent respectfully prays that certiorari be denied.

Respectfully submitted,

HENRY SCHNEIDER, Esq.
Counsel for Respondent
51 West 51st Street
New York, New York 10019
Tel.: (212) 581-9000

New York, New York
February 17, 1972